NEWS RELEASE

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Department of Commerce and Insurance
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FOR IMMEDIATE RELEASE
Dec. 16, 2008
#08-47

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TENNESSEE LEADS LARGEST STATE SETTLEMENT WITH A DIETARY SUPPLEMENT PRODUCER

Makers of Airborne Settle Charges of Deceptive Advertising for $7 Million; Agree to Change Marketing Practices

Tennessee Attorney General Bob Cooper with Consumer Affairs Director Mary Clement and the Attorneys General of 32 states and the District of Columbia filed settlements today with Airborne Health, Inc., resolving allegations of unsubstantiated and unlawful marketing claims concerning their products.

Under the agreement, the Florida-based maker of the Airborne Effervescent Health Formula, and its founders and current owners, Victoria Knight-McDowell and her husband Thomas John McDowell, will pay $7 million to the attorneys general to settle allegations. The $7 million payment is the largest payment to date in a multistate settlement with a dietary supplement producer. Tennessee's portion of the settlement as lead state is $780,000.

"All companies are required to ensure that the products or services they offer perform as advertised," Attorney General Bob Cooper said today. "There is no credible scientific evidence that Airborne's products would prevent colds or provide many of the health benefits Airborne was claiming, particularly for Vitamin C."

The lawsuit filed today by Attorney General Cooper alleges that the defendants made health-related claims in the marketing, packaging, advertising, offering and selling of their line of dietary supplements that were not substantiated by reliable and competent scientific evidence at the time the claims were made. The Attorney General alleges that the Defendants explicitly and implicitly claimed to sell a cold prevention remedy, a sore throat remedy, a germ fighter, and an allergy remedy without adequate substantiation to prove that the products could perform as advertised at the time the claims were made. The Attorney General also alleges that the Defendants failed to adequately warn consumers about potential health risks to select populations, including pregnant women, under old formulations of Airborne that contained 5,000 International Units of Vitamin A per dose. Currently, the level of Vitamin A in Airborne is 2,000 International Units.

Under the settlement, the defendants have agreed not to make any express or implied claim concerning the health benefit, performance, efficacy or safety of their dietary supplement products unless there is reliable scientific evidence to substantiate each claim. Specifically, the defendants are prohibited from saying "take at the first sign of a cold symptom," and other claims that imply that Airborne can diagnose, mitigate, prevent, treat, or cure colds, coughs, the flu, an upper respiratory infection or allergies. By law, advertisements for dietary supplements like Airborne, cannot make such drug claims even if they can provide substantiation, unless and until they have been approved as a drug by the FDA.

Airborne – Original is the number one selling dietary supplement in its category and is sold at most major retailers. It consists of Vitamin A, E, zinc, selenium and large doses of Vitamin C. Today's settlement covers all Airborne products including Airborne – Original, Airborne – Pink Grapefruit, Airborne – Lemon-Lime, Airborne – Nighttime, Airborne, Jr., Airborne On-The-Go, Airborne Seasonal Relief, Airborne Sore Throat Gummi Lozenges, Airborne Soothing Throat Gummi Lozenges, Airborne Power Pixies, or any substantially similar product the Defendants produce in the future.

Airborne is the number one selling product in the cold and cough aisles of major retailers. Under the settlement, the defendants are prohibited from requiring, demanding, or otherwise influencing where a retailer places their products.

In addition, the defendants are prohibited from marketing any product that contains directions for use that would, if followed, result in an individual ingesting 15,000 International Units of Vitamin A or more per day. While the scientific literature is not completely uniform with some studies placing the toxicity levels of Vitamin A at 100,000 International Units of Vitamin A, other studies place the toxicity levels of Vitamin A at much lower amounts – particularly for pregnant women and children. If a consumer followed the current directions for use, they would ingest 6,000 International Units of Vitamin A.

The multistate settlement follows settlements the defendants reached with the Federal Trade Commission and a private class action, *Wilson v. Airborne, Inc., et al,* filed in federal district court in the Central District of California. Under the terms of those settlements, consumers could receive restitution under a fund totaling $23.5 million, if they made their claims by September 15, 2008. Under the settlement reached with the FTC, an additional $6.5 million would be added to the fund if the number of claims exceeded $23.5 million.

The defendants have not admitted to any wrongdoing and deny the factual allegations asserted in the Attorney General's complaint.

The State's lawsuit and the settlement may be viewed by going online to www.tn.gov/attorneygeneral/

Consumers who have complaints about unsubstantiated health or advertising claims or any consumer matter should go online to http://www.state.tn.us/consumer or call the Division of Consumer Affairs at (615) 741-4737 or toll-free in Tennessee at 1-800 342-8385.